

## **Pesticide Enforcement Grant Outcome Measure No. 1 - Repeat Violator**

### **March 2005**

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**Repeat Violator Measure:** Percent of recipients of enforcement actions receiving subsequent enforcement actions.

$$\frac{\text{Regulated Entities Receiving Subsequent Enforcement Actions}}{\text{Universe of Entities Receiving Enforcement Actions}}$$

**Explanation of the Measure:** The purpose of this measure is to quantify the effect of enforcement actions on the subsequent behavior of the violator. While some grantees may conduct follow-up inspections of previous violators in certain circumstances, the measure does not presume that follow-up inspections are grantee policy; the decision whether to conduct follow-up inspections is determined by the grantee. The data used to calculate the percentage of repeat violators is collected through use of the Pesticide Enforcement Outcome Measure Reporting Form (attached).

### **Definitions**

**Enforcement action** is defined in EPA's Guidelines for Using EPA Form 5700-33H (relevant portions attached). The types of enforcement actions included in all the measures should be identical. State/Tribes are encouraged to report total enforcement actions, not just enforcement actions funded by EPA Pesticide Enforcement Grant funding, on form 5700-33H.

**Regulated entities receiving subsequent enforcement actions** - Those entities to whom an enforcement action was issued for a violation of federal, state or tribal pesticide laws or regulations and who also receive a subsequent enforcement action stemming from another documented instance of non-compliance with any of those laws or regulations within three years from the date of the initial enforcement action. (The date of the initial enforcement is as determined by each grantee, consistent with its enforcement policies/procedures). In determining what entity received a subsequent enforcement action (i.e. pest control company vs. pest control operator; branch office vs. parent company) each grantee should report according to how each answers this question under its local regulations or enforcement response policies.

**Universe of entities receiving enforcement actions** is defined as the total number of entities receiving enforcement actions.

### **Limitations on the data:**

The measure must assume wide flexibility in how a grantee administers its programs, as, for example, when and whether it conducts follow-up inspections of previous violators, how it determines whether an entity that receives a subsequent violation is the same as an entity receiving a previous violation, what its enforcement response policies are, the scope and impact of compliance assistance, education and other prevention activities

outside of the compliance monitoring and enforcement process, and the scope of pesticide regulation and ability to proceed to enforcement action. This flexibility, however, results in reducing significantly the utility of using the data generated by this measure in making grantee-to-grantee comparisons. The measure will, therefore, be most useful for the generation of grantee-specific multi-year rolling average baselines against which year-to-year progress can be measured, and when aggregated at the national level using multi-year rolling averages to identify broader program trends.

## **Pesticide Enforcement Grant Measure No. 2 - Complying Actions**

### **March 2005**

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**Complying Action Measure:** Percent of complying actions taken as a result of grantee compliance monitoring and enforcement actions.

**Formula:**      
$$\frac{\text{Number of Enforcement Actions Resulting in Verified Compliance}}{\text{Total Number of Enforcement Actions}}$$

**Explanation of Measure:** The purpose of this measure is to quantify the impact of grantee compliance monitoring and enforcement on obtaining compliance with pesticide laws. Bringing individuals into compliance is a primary goal and outcome for compliance activity. This outcome is being measured by determining the percent of enforcement actions that the grantee has verified have resulted in correction of the violations that were the subject of enforcement actions. The data used to calculate this measure is collected through use of the Pesticide Enforcement Outcome Measure Reporting Form (attached).

### **Definitions:**

**Enforcement Action** - as defined in the guidelines in Cooperative Agreement for completing EPA Form 5700-33H. The types of enforcement actions included in all the measures should be identical. State/Tribes are encouraged to report total enforcement actions, not just enforcement actions funded by EPA Pesticide Enforcement Grant funding, on form 5700-33H.

**Enforcement Actions Resulting in Verified Compliance** - The violations that were the subject of the enforcement action have been abated, including actions have been taken such that a repeat violation is not to be expected. This usually means that whatever was the cause for the violation has been addressed. For example, if ignorance of the legal requirements resulted in a violation, correction may be through verified training about or reading the requirements. Or, if a misuse of a pesticide occurred because the applicator did not have the appropriate equipment, the corrected enforcement action may have the applicator obtaining the appropriate equipment and learning how to use it. This measure recognizes that more than one enforcement action can result from a single inspection.

### **Other forms of compliance include, but are not limited to:**

- . Corrected advertising
- . Correction of formulation - adulterated or exempt product
- . Registration of product
- . Disposal of cancelled/banned product
- . Applicator Certification & Training

- Removal/clean up in case of structural misapplication
- Worker Protection Standard - Central posting location provided, PPE
- Registration of company

**Verified** - The standard for verification will be a practical standard such as a signed, written documentation or an inspection, including actions taken observed at the time of the original inspection. Some grantees, because of falsification provision of records, require signed documents as a form of verification from the violator. Additionally, some violations may be more difficult than others to verify as corrected. Grantees need to determine the most appropriate verification method (e.g., violator provides to grantee information on the measure taken to prevent future violations). While this measure does not require follow-up inspections, all violations for the enforcement action must be verified as corrected in order to be counted under the measure.

<b>Examples of actions that might be demonstrated through documents include:</b>	
<b>Violation</b>	<b>Verified Compliance</b>
Application records are not complete	The new format can be sent in to the State Lead Agency
Illegal disposal of pesticide product	Third party verification such as invoicing for disposal is submitted
No backflow prevention device	Third party verification by installer of device is received
Unregistered pesticide	Registration is completed
Uncertified/unlicensed applicator	License or certification is granted
Uncertified/unlicensed applicator	Written agreement is signed to not engage in pesticide applications
Untrained agricultural workers	Training records signed by employees are received
Pesticide application information is not given	A plan for providing application information is received
No central location posting or application information for Worker Protection Safety	Submit photograph of central location and application log

**Limitations on the data:**

The measure must assume wide flexibility in how a grantee administers its programs, as, for example, when and whether it conducts follow-up inspections of previous violators, how it determines whether an entity that receives a subsequent violation is the same as an entity receiving a previous violation, what its enforcement response policies are, and the scope of pesticide regulation and ability to proceed to enforcement actions. This flexibility, however, results in reducing significantly the utility of using the data generated by this measure in making grantee-to-grantee comparisons. The measure will, therefore, be most useful for the generation of grantee-specific multi-year rolling average baselines against which year-to-year progress can be measured, and when aggregated at the national level using multi-year rolling averages to identify broader program trends.

### **Pesticide Enforcement Grant Measure No. 3 - Efficiency Measure**

#### **March 2005**

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**Efficiency Measure:** Cost of conducting inspections that identify violations.<sup>1</sup>

**Formula:**

$$\frac{\text{EPA Pesticide Enforcement Grant Funding} + \text{Grantee Pesticide Enforcement Funding}}{\text{Total Number of Enforcement Actions}}$$

**Example:**

In a given year, Grantee A receives \$350,000 in EPA Pesticide Enforcement Grant Funding. Grantee A also contributes \$1,900,000 from general revenue and fees toward pesticide enforcement and has 200 enforcement actions.

$350,000 + 1,900,000 = \$2,250,000$  Total program cost

$\$2,250,000 / 200$  enforcement actions = \$11,250 Average cost per enforcement action

**Explanation of Measure:** The purpose of this measure is to quantify the efficiency of an inspection program to find violations, i.e., the efficiency of the program to conduct or target inspections that identify violations. The measure calculates the average cost of such inspections. Since in FIFRA, an inspection is almost always required for an enforcement action to be taken, and an enforcement action is a documented identification of a violation, the measure uses the number of enforcement actions as an indicator or substitute for the number of inspections for which violations were identified. As defined, enforcement actions encompass a broad array of actions taken by the State Lead Agency (SLA) or Tribe - including several categories of non-penalty actions. The measure will encourage better targeting, cost reductions and increased documentation of violations. It is not intended or expected to encourage penalty actions.

Since EPA pesticide enforcement grant funding only represents a portion of the total program costs, state/tribal contributions are also included in the measure.

The data used to calculate this measure is collected through use of the Pesticide Enforcement Outcome Measure Reporting Form (attached).

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<sup>1</sup> This measure may be reported in the inverse - inspections identifying violations per dollars spent. This is the standard formulation of an efficiency measure and is, for example, how this measure is reported in the Program Assessment Rating Tool (PART) administered by the U.S. Office of Management and Budget. Also, as stated in the explanation to this measure, “inspections identifying violations” is being treated as equivalent to “enforcement actions.”

## **Definitions:**

**Enforcement Action** - as defined in the guidelines in Cooperative Agreement for completing form 5700-33H. The types of enforcement actions included in all the measures should be identical. Grantees should report total enforcement actions, not just enforcement actions funded by EPA Pesticide Enforcement Grant funding, on form 5700-33H.

**EPA Pesticide Enforcement Grant Funding** - Funds provided to grantees for pesticide enforcement and compliance monitoring. EPA Regional Offices will provide these figures. The total must be broken out to include funds identified as “base enforcement”, “worker protection”, “enforcement discretionary” and “lab equipment” funding. Funds provided to grantees for PREP, PIRT, and laboratory support for the antimicrobial testing program are not to be reported by the Regional Offices.

**Grantee Pesticide Enforcement Funding** - Each grantee will need to identify its financial contribution toward pesticide enforcement and compliance monitoring. This may include all staff time and overhead expenses associated with targeting and conducting inspections as well as case development and penalty assessment. It may also include training of inspectors and staff. Support for state/tribal pesticide laboratories for equipment and payroll costs of staff who analyze samples collected during investigations leading to enforcement actions should also be included in the grantee’s total funding.

Recognizing that, during an inspection, it is very common to pull samples, interview, check for the proper applicator licenses, and give direction on future compliance (compliance assistance), the costs associated with these activities should be included in the Grantee Pesticide Enforcement Funding total. When practical, the payroll for staff, or expenses associated with compliance assistance activities such as conducting seminars or public meetings with regulated industry, providing remedial training for violators, or conducting compliance assistance visits/workshops should not be included in the Grantee Pesticide Enforcement Funding total. The total figure also should not include payroll costs or expenses for staff involved with pesticide program (non-enforcement) activities.

U.S. EPA acknowledges grantees without cost accounting systems in place may have difficulty calculating this figure. For those grantees without a system in place, you should work with staff in your financial service organizations to determine a methodology for capturing these costs. This methodology should be documented and you should use the same approach for arriving at pesticide enforcement total costs each year.

## **Limitations on the data:**

The measure must assume wide flexibility in how a grantee administers its programs, as,

for example, how it determines whether an entity that receives a subsequent violation is what its enforcement response policies are, the scope and impact of compliance assistance, education and other prevention activities outside of the compliance monitoring and enforcement process, the scope of pesticide regulation and ability to proceed to enforcement actions, what cost accounting process it uses for this measure, and its ability to accurately account for the total resources devoted to enforcement and compliance monitoring versus other program activities. This flexibility, however, results in reducing significantly the utility of using the data generated by this measure in making grantee-to-grantee comparisons. The measure will, therefore, be most useful for the generation of grantee-specific multi-year rolling average baselines against which year-to-year progress can be measured, and when aggregated at the national level using multi-year rolling averages to identify broader program trends.



Attachment

**Excerpt from the GUIDELINES for USING EPA FORM 5700-33H; April 2004 edition**

**G. Enforcement Action Category Definitions**

Only those enforcement actions initiated as a result of an inspection should be reported on EPA Form 5700-33H.

It is understood that many States/Tribes initiate enforcement actions which are not specified as one of the standard categories for enforcement action on EPA Form 5700-33H or defined in these guidelines. The State/Tribe should consult with their Regional Office to determine which reporting categories most closely match such enforcement actions. Enforcement actions not readily falling within one of the ten standard categories on the form should be reported in the enforcement action category **“Other Enforcement Actions”** and described in the narrative portion of the accomplishments report.

The eleven standard categories of enforcement actions listed on EPA Form 5700-33H are defined, for uniform reporting purposes as follows:

1. Civil Complaints Issues

Civil Complaints include any written notice proposing a monetary penalty for a violation. These actions should be reported during the period in which they are issued to the respondent.

2. Criminal Actions Referred

Criminal Actions are those legal actions pursued in a court of law. These actions should be reported during the period in which the case is referred to the judicial system (e.g., State Attorney General, District Attorney, or County Prosecutor).

3. Administrative Hearings Conducted

An Administrative Hearing is when an alleged violator is required to appear before a State, Tribal or Federal hearing officer to explain why the violation occurred. These actions should be reported during the period in which the hearing is conducted.

4. License/Certificate Suspension

5. License/Certificate Revocation

#### 06. License/Certificate Conditioning or Modification

These are usually administrative actions taken to further restrict the use of restricted-use pesticides by certified applicators by suspending, revoking or modifying the terms of the applicator's license or certification.

#### 7. Number of Warnings Issued

To be counted, warnings must be a **written notification** pointing out the violation(s) and placing the recipient on notice that further violation may result in additional enforcement action. Warnings should be reported during the period in which the warning was issued.

#### 8. Stop-Sale, Seizure, Quarantine, or Embargo

All official written orders for removing products in violation from sale or use should be reported in this category.

#### 9. Cases Forwarded to EPA For Action

This includes all inspection files which document violations of FIFRA and are documented and forwarded to EPA for enforcement action.

#### 10. Other Enforcement Actions

Any other written, verifiable enforcement action initiated by the state, tribe, or federal agency that is not comparable to one of the above enforcement action categories.

#### 11. Number of Cases Assessed Fines

This figure indicates the number of enforcement cases resulting in the assessment of a monetary fine (e.g., civil complaint settlements, criminal court actions, or administrative hearing orders).

### **H. Narrative**

Accomplishment Reports should be accompanied by a narrative portion as described below:

#### 1. Inspections Conducted

Inspections which do not fall within one of the eleven standard inspection categories should be reported in the narrative.

#### 2. Enforcement Accomplishments

Enforcement actions not readily falling within one of the standard categories on the form should be reported in the enforcement action category “Other Enforcement Actions” and described in the narrative portion.

Enforcement actions which are not the result of inspections in the field may be reported in the narrative.

Some examples of what would be included under “other enforcement actions” include the following; advisory letters, agreements on remedial action, notices of intent to sue, consent agreements, reports of substandard treatments, treatment correction notices, and stop work order notice.

A “field notice” would be included under the category of “other enforcement actions” (as opposed to the “warning” category) only if it does not meet the definition of a “warning” as described in item #7.

## Guidance for the Pesticide Enforcement Grant Outcome and Efficiency Measures Program Assessment Rating Tool (PART) measures

These PART measures are expected to and should receive heightened scrutiny and use in determining the success and value of the pesticide enforcement grants. These measures are high profile in that they are expected to be scrutinized closely by EPA and OMB managers. This guidance should be used with the PART measures definitions and explanatory guidance issued March 2005, attached.

### **General Guidance:**

To be truly effective measures and to correctly describe a grantee's entire pesticide enforcement program, the numerators and denominators in each of the three PART measures need to reflect total enforcement program reporting, not simply reporting of inspection and enforcement activities conducted under the pesticide enforcement cooperative agreement. A clear indicator of this can be found in the following example using PART Measure Number 3 - Efficiency.

State A reports their pesticide enforcement program is funded at \$500,000, and EPA provides \$200,000 in grant funding. The State reports, on EPA Form 5700, that they had 500 [state & grant] enforcement actions throughout the year. The measure is calculated as follows:

$$\$500,000 + \$200,000 = \$700,000 / 500 = \$1400$$

The "Cost of conducting inspections that identify enforcement actions is \$1400.

State B also reports that their pesticide enforcement program is funded at \$500,000, and EPA provides \$200,000 in grant funding. The State reports, on EPA Form 5700, that they had 100 [grant only] enforcement actions throughout the year. The measure is calculated as follows:

$$\$500,000 + \$200,000 = \$700,000 / 100 = \$7000$$

The "Cost of conducting inspections that identify enforcement actions is \$7000.

From an efficiency standpoint, State A would appear to be more effective than State B, on a cost basis, in identifying violators, even though this may not actually be the case because State B is not reporting all enforcement program accomplishments.

In order for the Agency to have a sense of the underlying logic behind the data reported by grantees, at least every year for the early years of the collection of these data, project officers (PO's) should look at and document in the end-of-year report the following:

### **Data quality:**

- Is the summary data being reported traceable to individual state or tribal inspection reports or case files such that, for example, the summary data can be verified by looking

- at inspection and enforcement reports?
- What is the system for assuring that the summary data accurately represents what is in the reports submitted to EPA?
- Did the grantee correctly apply the measure definitions in reporting the data? For example, are they using the enforcement action category definitions as defined by the Guidelines for Using EPA Form 5700-33H, attached to the PART measure definitions?
- Is the grantee reporting all enforcement accomplishments, both grantee funded and those funded by EPA grant funds?

For measures 2 and 3, the total number of enforcement actions will be that reported by the grantee on EPA Form 5700-33H.

### **Program policies and practices that may affect the numbers:**

As stated in the measure definitions, the measures overlay many variations among grantees in how they administer their programs. It is those variations that are expected to make cross-grantee analysis difficult. Yet if these variations are known, analysis and trends may be possible to make to explain the data. PO's should, therefore, try to document in the end-of-year report these variations.

For Measure 1: For purposes of this guidance, any ensuing violation of a grantee's laws or regulations shall be considered a repeat or subsequent violation, not simply the same or similar violations. Questions to be asked include:

- Does the program have a set policy or practice of conducting follow-up inspections of previous violators?
- How often and under what circumstances?
- How does the grantee define "the same entity receiving a previous violation?"
- How does the grantee calculate the date of the initial enforcement action and the date of any subsequent enforcement action?
- Is there a notable compliance assistance program that could affect whether there are repeat violations?
- Is the grantee aware of types of violations or violators that do not fit the average pattern reflected in what is reported as a summary number?
- What is the escalation policy (i.e., enforcement response policy) followed by the grantee to address repeat violators? If a grantee forwarded cases to EPA for action, the region should make every effort to report back to the grantee the results of these cases to assist grantees in tracking subsequent violations.

For Measure 2:

- What approaches to verification is the grantee using, especially for large categories of inspection types or violations?
- Is follow-up being relied upon vs. some other form of documentation?
- Are there categories of violations where the grantee is not finding a way to verify that a complying action is being taken?
- What are those categories and what proportion of the reported enforcement actions are they?

For Measure 3:

- Did the grantee provide the requested funding information about their enforcement program?
- How did the grantee determine the amount of funding for enforcement; is that budget split up front from other activities; was it based upon estimates and by whom?
- Did the method chosen tend to be over inclusive or over inclusive of costs associated with enforcement?
- Were overhead expenses included, not included, etc? The focus should be on areas where significant costs may be excluded or over included.

### **Project Officer Analysis**

During the first years of collecting grantee data to populate these measures, it is particularly critical that project officers make every effort to communicate with grantees in order to understand the specifics of the grantee's enforcement program. Only in this way will EPA be able to have a good sense of what is behind the reported data. Where a project officer (or a team of project officers) is aware of unusual results from one grantee or a number of grantees, the project officer should provide an analysis of how or why the reported outcomes do not follow expected results. The PO may be aware of unique factors - even those beyond what may be captured in the questions above (geography, unique categories of applicators or pesticide uses, special targets, etc.) - that may help explain the results and the differences or similarities. At a national level, this information may provide additional insight in making national comparisons.



## Pesticide Enforcement Outcome Measure Reporting Form

**Grantee** \_\_\_\_\_

**Fiscal Year** \_\_\_\_\_

### Measure No. 1 - Repeat Violator

<b>A. Total # of Regulated Entities Receiving Enforcement Actions</b>	<b>B. Total # of Entities Receiving Subsequent Enforcement Actions (i.e. subset of column A)</b>	<b>C. Repeat Violator Measure—B/A</b>

### Measure No. 2 - Complying Actions

**D. Total # of Enforcement Actions Resulting in Verified Compliance:** \_\_\_\_\_

**E. Total # of Enforcement Actions (from form 5700-33H):** \_\_\_\_\_

**F. Complying Actions Measure—D/F:** \_\_\_\_\_

### Measure No. 3 - Efficiency

**G. Grantee Pesticide Enforcement Funding: \$** \_\_\_\_\_

**H. EPA Pesticide Enforcement Funding: \$** \_\_\_\_\_

Base Enforcement \_\_\_\_\_

Worker Protection \_\_\_\_\_

Enforcement Discretionary \_\_\_\_\_

Lab Equipment \_\_\_\_\_

**I. Efficiency Measure—(G+H)/E:** \_\_\_\_\_